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March 3, 2006

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Ms. Donna Gregg  
Chief, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

Re: Ex Parte Presentation  
MB Docket 03-15

Dear Ms. Gregg:

On behalf of the New Jersey Public Broadcasting Authority (NJPBA), we are hereby responding to a written ex parte presentation made on February 13, 2006 by The Walt Disney Company (WABC) in connection with the request by WABC for allotment of analog Channel 7 as its DTV channel for WABC-DT, New York, New York. That presentation consists of a letter to you from Susan L. Fox, Vice President, Government Relations for WABC. The letter makes a number of claims that require a response at this time.

First, contrary to WABC's claim, copies of the letter were not sent to NJPBA representatives. NJPBA only learned of it through review of the FCC's period Public Notices regarding ex parte filings.

Second, it should be noted that NJPBA on February 23, 2006 submitted its proposal for location of WNJB-DT at 4 Times Square, New York, New York, as promised at the January 19 meeting among representatives of WABC, NJPBA and Commission staff. This filing renders moot WABC's precipitate call for a deadline for submission of such a proposal by NJPBA.

Third, with respect to WABC's unsolicited assertion that it will oppose any request by NJPBA to extend the July 1, 2006 "use it or lose it" deadline, it should be noted that any forced reduction in power for WNJB-DT will only exacerbate the interference caused by WABC-DT to WNJB-DT. Specifically, limiting WNJB-

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DT to its current power level will make that signal 3 dB weaker vis a vis WABC-DT than the level which is the basis of the FCC's calculation that WABC-DT Channel 7 operations will cause 2.8% prohibited interference to WNJB-DT. As a result, the 2.8% level of interference that is the subject of WABC's waiver request will in fact be much worse. Needless to say, the additional interference would further undermine WABC's flawed waiver request, and of course NJPBA would vigorously oppose further erosions of its service area.

Perhaps most important, the underlying substance of WABC's missive belies its claim (WABC Letter, p. 2) that WABC "would like to work with WNJB to achieve a cooperative solution." WABC gratuitously alleges "concerns" with NJPBA's relocation proposal,<sup>1</sup> asserts that it "has no intent" of funding NJPBA's Times Square proposal, and states "for the record" that it will object to "any motion" by NJPBA to extend the "use it or lose it" deadline. It seems obvious that WABC will voluntarily agree to one solution and one solution only, namely, a directional antenna for NJPBA at its current location that would require NJPBA to relinquish substantial coverage properly achieved through the FCC maximization process.

In essence, WABC wants a DTV channel in which it has no inherent rights on its own terms and without regard to the legitimate expectations of other parties or the broader public interest. NJPBA trusts that the FCC will recognize WABC's tactics as uncompromising and coercive, and ultimately make a ruling on the side of maximum service and minimum interference to the benefit of an historically underserved state.

Inasmuch as this letter is filed pursuant to Section 1.1206 of the Commission's rules, it should be treated as an ex parte presentation.

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<sup>1</sup> In this regard, NJPBA reminds both the FCC and WABC of the suggestion by WABC representatives at the January 19 meeting that relocation of WNJB-DT was a matter between NJPBA and the FCC.

Respectfully submitted,

SCHWARTZ, WOODS & MILLER

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MGS/mkm

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Heather Dixon, Office of Chairman Martin  
Donna Gregg, FCC MB  
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